IN THE HIGH COURT OF JUDICATURE AT BILASPUR.

WRIT PETITION NO. 106 OF 2000

PETITIONER : Kalyan Singh,
Aged about 41 years, s/o Shri Kalvin Masih, caste Gond, resident of village - Tikar (Jyotipur), Gaurella, Police Station Gaurella, Tahsil-Pendra Road, District- Bilaspur, Chhattishgarh.

VERSUS

RESPONDENT(S)

1. State of Chhattisgarh,
through the Secretary,
Home Department, Raipur,
Chhattisgarh.

2. The Superintendent of Police,
Bilaspur, Chhattisgarh.

3. Shri Prakash Pandey,
Sub Divisional Officer(Police)
Tahsil Pendra Road,
District Bilaspur, Chhattisgarh.

4. Shri Dubey,
Town Inspector,
Police Station Gaurella,
District Bilaspur, Chhattisgarh.

5. Shri Bhagwat Dahariya,
Head Constable,

6. Shri Mahesh Verma,
Constable,

7. Shri Dilip Dahariya,
Constable,

8. Shri Siya Ram,
Constable,

(9)

Respondent No. 5 to 6 are posted in Police Station Gaurella, Tahsil Pendra Road, District - Bilaspur, Chhattisgarh.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI/PROHIBITION ETC. OR ORDER OR DIRECTION IN THE LIKE NATRUE.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 106 of 2000

Petitioner : **Kalyan Singh**

VERSUS

Respondents : **State of Chhatttisgarh & Others.**

Shri Rajesh Pandey, learned counsel for the petitioner.
Shri Sandeep Dubey, learned G.A. for the State.
Shri Sanjay Ku. Agrawal, learned counsel for respondents 3,5,6 & 7.

O R D E R

(Passed on 10 -02-2006)

Dhirendra Mishra, J

The petitioner by this petition under Articles 226/227 of the Constitution of India is praying for issuance of writ in the nature of mandamus seeking a direction against the State to pay him compensation to the tune of Rs. 5,00,000/- for the constitutional tort committed by the respondents. He has further prayed for imposition of appropriate punishment on the respondents in accordance with law who are alleged to have subjected the petitioner to torture in police custody.

2. Case of the petitioner in brief is that he is the resident of village Tikar (Jyotipur), Police Station Gaurella and is mason by profession whereas respondents 3 to 8 are the Police Officers posted at Police Station Gaurella under respondent No.2.

3. It is alleged by the petitioner that he under the instructions of respondent No.4 had undertaken the work of plastering in the quarters constructed in the campus of police station Gaurella in the month of October 1999. However, as the petitioner was not paid the wages by the respondent No.4 despite several requests, he stopped the work. This stoppage of work by the petitioner annoyed respondents 4 to 8 and while the petitioner was engaged in the

construction work in the house of one Rakesh Sahu of village Gaurella, respondent No.5 – the Head Constable along with respondents 6 and 7 went there, abused the petitioner and beat him with stick. Thereafter, his hands and legs were tied by a rope and the Town Inspector (respondent No.4) came with two other constables and started mercilessly beating the petitioner. The petitioner was even dragged from the place of the incident to the police station throughout the street and in this process also he was continuously beaten and abused by the police personnel.

4. Whole incident was witnessed by the people of the locality as the road from where he was taken traverses through the busy market of the area. It is further alleged that beating started from 10/11.00 p.m. on 29.10.99. Respondent No.8 administered electric shock in his legs. Respondent No.4 beat him with stick and kicks whereas respondent No.3 SDO (P) squeezed his head by boot after beating as a result of which the petitioner became unconscious. Petitioner also alleges that one constable urinated over his face. It is also alleged that sole of his feet were burnt by giving electric current and realizing that the condition of the petitioner was worsening and he might die, the police personnel started giving medical treatment to him. Thereafter, he was taken to the Community Health Centre, Gaurella whereupon the doctor referred him to District Hospital, Bilaspur vide Annexure P-1. He was admitted in the District Hospital, Bilaspur at 5.20 a.m. on 30.10.99 vide Annexure P-2. The doctor of District Hospital, Bilaspur again referred the petitioner to Medical College Hospital, Raipur for X-ray vide Annexure P-3 dated 30.10.99, as the X-ray machine of District Hospital, Bilaspur was out of order. Thereafter the petitioner was discharged from District Hospital, Bilaspur vide Annexure P-4 dated 01.11.99. The petitioner was given some treatment at Medical College Hospital Raipur vide medical report Annexure P-5. It is averred that during this period the petitioner was unconscious and he came to know about his shifting from one place to another by the police later, through the documents and the charge sheet filed by the police. He was ultimately produced before the Judicial Magistrate First Class, Pendra Road on 02.11.99 and the learned Magistrate directed medical examination of the petitioner and asked for the medical report. As per the directions of the Court respondent No.4 forwarded

the petitioner to Medical Officer, Gaurella for examination and also for appropriate treatment vide memorandum of Annexure P-6. The petitioner was formally shown under arrest on 02.11.99. The Asstt. Surgeon examined the petitioner and gave his finding that the petitioner was complaining acute pain and noticed tenderness, headache, pain in right side of the face, scarring in between toes of left foot and multiple abrasions over left foot etc. and thus the doctor referred the petitioner to Sardar Patel Hospital, Bilapur for X-ray and special Orthopedic Opinion & Management. Respondent No.4 vide Annexure P-7 addressed to B.M.O. Gorella requested for providing an ambulance with staff for carrying the petitioner to District Hospital, Bilaspur for further treatment. Respondent No.4 also lodged the complaint before JMFC, Pendra Road to the effect that doctors were not providing treatment to the petitioner vide Annexure P-8. The BMO vide reply of Annexure P-11 to the memo dated 03.11.99 stated that ambulance was not available at the centre and therefore the petitioner be taken to Bilaspur by train. It is further averred that learned Fourth Additional Sessions Judge, Link Court, Pendra Road by order dated 18.11.99 vide Annexure P-12 granting bail to the petitioner observed that the petitioner was illegally detained by the police from 29.10.99 to 02.11.99. The Court has further observed that while the petitioner was in police custody he had sustained several injuries and even on that day the petitioner required appropriate treatment. It is also averred that Christian Community had proceeded against the inhuman and barbaric treatment given to the petitioner by the police and the Human Rights Commission did not take cognizance of the complaint of the petitioner on the ground that case was already pending in the Court vide Annexure P-16.

5. In reply to the petition respondent Nos. 1 & 2 have taken defence that Crime No.151/99 for the offences under Sections 341, 294, 323 and 506-B of the IPC was registered against the petitioner as he was absconding. Further defence was taken by respondents No. 1 & 2 that the petitioner was a mason by profession some twenty years back and had fallen from certain height some twelve years back while constructing some structure and the same had resulted in some injuries in his waist. Crime No.235/99 for the offences under

Sections 186, 332, 333 and 307 of the IPC was registered against the petitioner as he had caused injuries to Head Constable Bhagwat Prasad Deharia and in the above incident he also assaulted Constable Dilip Kumar Dhiri who sustained injuries. After causing injuries the petitioner ran away from the place of incident and he was caught by the police party and brought to the police station in an auto-rickshaw as he was not able to walk. From the police station the petitioner was sent for medical examination. On enquiry he revealed that he had met with some accident some twelve years back and therefore he was not able to walk.

6. According to respondents No. 1 & 2 the instant petition has been filed in order to cook up a defence as the petitioner was involved in two criminal cases and rest of the allegations were denied. In almost identical return the respondent No.4 has stated that petitioner was wanted in connection with Crime No. 151/99 and he had deputed three Constables to arrest him on 29.10.99. A Constable informed that petitioner had assaulted Bhagwat Deharia with chopper (gadasa). He reached the spot and found Bhagwat Deharia in injured condition and he was taken to the hospital. Two Constables had caught hold of the petitioner. On enquiry the petitioner did not reply and pretended to be insane whereupon he took the petitioner to the police station and from there he was taken to Community Health Centre. Medical report of Bhagwat Deharia is Annexure R-4 (2). The doctor found as many as four lacerated wounds and two incised wounds over his head. Constable Dilip Kumar Dhiri also sustained injuries and his injury report is Annexure R-4 (3). On the report of Head Constable (respondent No.5) Crime No. 235/99 was registered against the petitioner under Sections 186, 332, 333 and 307 of the IPC. This respondent denied the allegation of non payment of wages to the petitioner and stated that maintenance of the police station is done by Public Works Department. It was also denied that the petitioner was dragged from the place of incident to the police station in full public view and was manhandled either by him or his subordinates. However, the allegation that he was admitted in the hospital and from there he was referred to District Hospital, Bilaspur and from there to Medical College

Hospital Raipur for X-ray has been admitted. As the petitioner was undergoing treatment he was not arrested until the doctor gave his report. It is further averred that show cause notice was issued to him by learned JMFC vide Annexure R-4 (5) and he submitted his reply vide Annexure R-4 (6) to the show cause notice.

7. Respondents No. 4, 5 and 6 in their separate reply have taken identical defence as that of respondent No.4. Respondent No.3 in his reply has taken identical defence and stated that he was on tour on the date of incident and by the time he reached the police station, the petitioner had already been sent to District Hospital, Bilaspur. The petitioner had no orthopedic problem as per the report of Annexure R-4 of the District Hospital and the doctors had not found any external injury over the body of the petitioner.

8. In rejoinder to the return of the respondents the petitioner has averred that after mercilessly beating him, he was taken to various hospitals in order to ensure that he should not die. JMFC Pendra Road after witnessing the injuries present on the body of the petitioner had ordered medical examination; sign of burn were detected by the doctors and all the injuries present on the body of the petitioner were caused when he was in police custody. He has further stated that learned Magistrate vide his remand order dated 2.11.1999 has mentioned all the irregularities committed by the Police after taking the petitioner into custody and accordingly issued a show cause notice vide Annexure P-20 to the Station House Officer calling upon him to show cause as to why he should not be considered guilty of the offence under Section 342 of the IPC for causing wrongful restraint to the petitioner. With the rejoinder the petitioner has also annexed certified copy of the certificate showing permanent disability to the extent of 90% issued by the Medical Board, Bilaspur.

9. Learned counsel for the petitioner submits that from the pleadings of the respective parties and documents annexed thereto it is undisputed that the petitioner was taken to the police station on 29.10.1999 in the noon and from police station he was brought to the Community Health Centre, Pendra Road

from where the doctor referred him to the District Hospital, Bilaspur and from there the petitioner was taken to Medical College Hospital, Raipur and ultimately he was produced before JMFC Pendra Road on 2.11.1999 after showing his arrest at about 2.30 p.m. It is also established from the observation of the Magistrate contained in the remand order as well as from the order of the learned Additional Session Judge granting bail to the petitioner as also from the medical report dated 2.11.1999 that while the petitioner was in the police custody he was beaten by the respondents 4 to 8 and as a result of which he sustained injuries and was not able to walk as he had sustained permanent disability to the extent of 90% .

10. The arrest of the petitioner was in utter violation of the guidelines issued by the Supreme court in the matter of **D.K.Basu Vs. State of West Bengal** reported in **AIR 1997 S.C. 610** and the petitioner was confined and beaten mercilessly by the respondents 4 to 8 without producing him before the Magistrate within 24 hours of his detention and the same amounts to illegal confinement. Thus on the basis of aforesaid admitted scenario that emerges from the material available on record the petitioner should be adequately compensated by the State for constitutional wrong done by the officers of the State as acts of respondents 4 to 8 are in violation of fundamental right of the petitioner by the State machinery. He further placed reliance in the judgment of the Supreme Court reported in **AIR 1993 SC 1960** in the matter of **Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa** .

11. On the other hand learned counsel for the respondents submits that the petitioner was involved in two criminal cases. On the date of incident the respondent No.4 had entrusted respondent No.5 and two other constables to arrest the petitioner in connection with Crime No. 151/1999 and while he was asking him to accompany him to the Police Station, the petitioner all of a sudden attacked the respondent No.5 with chopper (Gadasa) and inflicted as many as six grievous injuries over the person of respondent No.5. He also inflicted injuries to Constable Dilip Kumar Dhiri (respondent No.7) and only thereafter police party somehow controlled the petitioner and took him to the

police station by auto rickshaw. Since the petitioner complained some pain over his body and expressed his inability to walk he was taken to the Community Health Centre for medical examination and as per reference of the doctor he was taken to Bilaspur and then to Raipur for treatment. However, doctors did not notice any orthopedic problem with the petitioner and two minor abrasions were found on his body and only then the petitioner was arrested on 2.11.1999 and was produced before the Magistrate, therefore, the allegation of the petitioner that he was arrested on 29.10.1999 and thereafter beaten mercilessly by respondents 4 to 8 and only to save his life he was taken to hospital and thus he was illegally confined from 29.10.1999 to 2.11.1999 is not borne out from the material available on record. It is further argued that from the disability certificate issued by the Medical Board it is not clear whether the disability mentioned in the said certificate refers to permanent disability or partial disability as the said certificate is shown to be valid for three years only from the date of its issuance. Even otherwise the certificate is in pro forma and said pro forma has not been filled in properly. It is argued that grievous injuries sustained by respondent No.5 are established from the report of Annexure R-4(2). In the aforesaid circumstances the petitioner is not entitled for any relief and the petition is liable to be dismissed.

12. The first contention is- whether from the pleadings and material available on record the petitioner has been able to establish that he was illegally detained by respondents No. 4 to 8 and was subjected to inhumane torture by them and whether as a result of the said torture the right leg of the petitioner from the right hip had become paralyzed and that he is not able even to stand and walk without crutches and as such he has sustained total disability? From the pleadings of the respective parties the undisputed facts are that on 29.10.1999 the petitioner was detained by two constables and thereafter he was taken to police station in auto rickshaw as he was not able to walk. Thereafter, he was sent to Community Health Centre, Gaurella for medical examination at about 21.05 hours and was examined there by the doctors at 20.30 hours. The doctor noticed two bruises of 4 x ½ cm over the left side

below neck and 3 x 1 cm over the back, chest and the petitioner was referred by the doctor to the District Hospital, Bilaspur for orthopedic check-up and final opinion.

13. The petitioner was further referred from Sardar Patel Hospital, Bilaspur to Medical College Hospital, Raipur on 30.10.1999 for X-ray and further treatment and he was discharged from District Hospital, Bilaspur on 01.11.1999. The petitioner was examined at Medical College Hospital, Raipur and radiological tests were also conducted and some treatment was given to him. Thereafter, he was produced before the Judicial Magistrate First Class, Pendra Road on 02.11.1999 after showing his arrest at about 14.30 hours on 02.11.1999 and the police prayed for his remand up to 16.11.1999. Learned Judicial Magistrate First Class, Pendra Road vide remand order dated 02.11.1999 has observed that the petitioner was sent for medical examination on 29.10.1999 first to Gaurella, thereafter to Bilaspur and then to Raipur. He was admitted in emergency ward of Medical College, Raipur, however, there is no document to show that he was discharged from Medical College, Raipur and the police without producing the petitioner in Bilaspur Hospital had straightaway produced him before the Magistrate after showing his arrest at 2.30 p.m. on 02.11.1999 and the information of the arrest has been given to his elder brother only on 02.11.1999. Thereafter, a show cause notice was issued to the Station House Officer of Police Station-Gaurella calling upon him to show cause as to under what circumstances the petitioner was kept into custody from 29.10.1999 to 02.11.1999 up to 14.30 hours. Learned Magistrate further observed that the petitioner was complaining pain in his waist and he was not able even to move. On enquiry about the same respondent No. 4- the Station House Officer admitted that the petitioner was not cured and he had produced him before the Magistrate after arrest and as the family members of the petitioner desired that he should be admitted in Gaurella Hospital, in the aforesaid circumstances, instead of sending the petitioner to sub-jail, Pendra Road, learned Magistrate directed the S.H.O. Mr. S.K. Dubey to admit the petitioner in Gaurella Hospital. Respondent No. 4 was also directed to submit daily report about

the condition of the petitioner till he is discharged from the Hospital. It was further directed that if the doctors advice that he should be treated in District Hospital, Bilaspur or at Raipur, in that case he could be shifted as per the requirement. Learned Magistrate also observed that detention of the petitioner from 29.10.1999 to 02.11.1999 by the police is illegal and in violation of Article 22(2) of the Constitution of India. Learned Magistrate called for explanation from respondent No.4- the Station House Officer of Police Station-Gaurella as to why he should not be held guilty under Section 342 of the Indian Penal Code for wrongful confinement of the petitioner.

14. Respondent No. 4 submitted his reply to the above show cause notice and denied the allegation. However, respondents have not denied that the petitioner was taken from the place of incident firstly to the police station and thereafter he was sent to various hospitals and as such the petitioner was in custody of the police from 29.10.1999 to 02.11.1999 up to 2.30 p.m. He was formally arrested and produced before the Magistrate. Thus on the basis of undisputed facts this Court is of the opinion that the petitioner was in the custody of the police from 29.10.1999 to 02.11.1999 up to 2.30 p.m. and there is no convincing explanation from the police for above illegal detention. It is also not disputed that the petitioner sustained injuries while he was in illegal custody of the police on 29.10.1999 and he underwent treatment for the same. Therefore, it can safely be concluded that the petitioner was tortured by the police on 29.10.1999 while he was in wrongful confinement as a result of which he sustained injuries.

15. Thus, from the admitted facts it is evident that respondents No. 4 to 7 arrested the petitioner and wrongfully confined him in violation of the guidelines issued by Supreme Court in the matter of D.K.Basu Vs. State of West Bengal (supra) wherein it has been directed that the police shall follow in all cases of arrest or detention the following preventive measures:

(i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The

particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(ii) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness. Who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(v) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next fried of the person who has been informed of the arrest and the names and particulars o the police officials in whose custody the arrestee is.

(vii) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection

Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

(viii) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(x) The arrestee may be permitted to meet his lawyer during interrogation, though no throughout the interrogation.

(xi) A police central room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police central room it should be displayed on a conspicuous notice board.

16. The second question for consideration is whether the petitioner who was wrongfully confined by the police can claim compensation in writ petition under Article 226/227 of the Constitution of India. Supreme Court in the matter of Smt. Nilabati Behera alias Lalita Behera(supra) has held as under;

> A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the

> concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution.

17. The Supreme Court in the matter of **Bhim Singh, M.L.A. Vs. State of J & K** reported in **AIR 1986 SC, 494** has held that though the police obtains remand of the arrested person but does not produce him before the Magistrate within requisite period, there is gross violation of his rights under Arts. 21 and 22 (2) of the Constitution of India. The Supreme Court has further held that if the arrest is made with mischievous and malicious intent, the victim can be compensated by awarding suitable monetary compensation in appropriate cases. In the said case Rs. 50,000/- were awarded to the victim for deprivation of right to attend the impending assembly session.

18. In the light of the aforesaid judgments of the Supreme Court this Court is of the opinion that in the instant case also the petitioner was illegally confined by the police for the period from 29.10.99 to 2.11.99 and during this period he was subjected to torture as a result of which he sustained injuries and thus he may be awarded compensation in a writ petition under Article 226/227 of the Constitution of India.

19. Now the third question to be answered in this writ petition is that what should be the quantum of compensation? The incident is of the year 1999. The petitioner has claimed that he sustained total disability because of the

torturous attitude of the police and he is not able to walk without the help of crutches and he was hospitalized for a considerable period.

20. In support of his contention the petitioner has filed disability certificate (P-19) issued by District Medical Board, Bilaspur. Unfortunately, after filing of the petition no independent enquiry was conducted and there is no independent witness regarding the duration of hospitalization and the extent of the injuries sustained by the petitioner. The disability certificate produced by the petitioner is in pro forma and in the said pro forma the columns have not been duly filled in, therefore it would not be safe to award any compensation to the petitioner on the basis of the said disability certificate annexed with the petition as the certificate mentions that the same would be valid for a period of three years from the date of its issuance i.e. 02.01.2001.

21. In the aforesaid circumstances, this Court is of the opinion that looking to the illegal detention of the petitioner and the injuries sustained by him and also the fact that he was referred to various hospitals for his treatment while he was in custody of the police, the ends of justice would be served if the respondents are directed to pay a sum of Rs. 50,000/- as compensation to the petitioner. They are also directed to pay a further sum of Rs. 10,000/- as cost within a period of six weeks. The Collector of the concerned District will take necessary steps in this regard and submit the compliance report to the Registrar (J) of this Court as early as possible. State shall conduct an enquiry and ascertain about the police personnel responsible for the illegal act alleged by the petitioner and then recover the amount from the responsible police personnel. It is clarified that the award of this compensation shall not prejudice the right of the petitioner to recover the compensation on the same ground by initiating independent legal proceedings. However in case the petitioner initiates any proceeding for recovery of compensation on the same ground, the amount of compensation paid to the petitioner shall be adjustable. Writ petition is accordingly allowed to the extent indicated above.

Sd/-
Dhirendra Mishra
Judge